

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MAURICE EMILE,)
v. Plaintiff,) Civil Action No. 04 - 974
S.C.I. PITTSBURGH, and PA DEPT OF)
CORRECTIONS,)
Defendants.)
Judge Gary L. Lancaster /
Magistrate Judge Lisa Pupo Lenihan

ORDER

On December 29, 2005, without first obtaining leave of court as required, Plaintiff filed a document entitled "Amendment to Civil Complaint 04-974." A motion to dismiss has been filed by Defendants and a response to that motion is due no later than January 23, 2006. The allegations of the amended complaint do not appear to raise any claims that were not previously raised in the original complaint.

The Court has determined that it will *sua sponte* grant Plaintiff leave to file the Amended Complaint; however, it shall not be considered a response to the pending motion to dismiss, which shall remain pending. Plaintiff is still ordered to file a responsive pleading and brief to the motion to dismiss by the January 23, 2006 deadline. If Defendants wish to file a supplement to their motion to dismiss based upon this amended complaint, they may do so no later than January 15, 2006 and a responsive pleading shall be due on behalf of Plaintiff within thirty days after filing of the supplement.

IT IS HEREBY ORDERED this 30th day of December, 2005 that the Court will *sua sponte* GRANT Plaintiff leave to file an amended complaint and the document filed on December 29, 2005 shall be deemed to be properly filed.

IT IS FURTHER ORDERED that in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(A), and Local Rule 72.1.3, the parties are allowed ten (10) days from the date of service to file an appeal from this order to the District Court. Failure to timely file an appeal may constitute a waiver of any appellate rights.



LISA PUPO LENIHAN
U.S. Magistrate Judge

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